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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,240	08/13/2001	Stephen F. Gass	SDT 303	8809
27630	7590	03/07/2005	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,240

Applicant(s)

GASS ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 21, 25, 26 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-15, 21, 25, 26 and 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/6/04; 8/17/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>1449's-4/17/04</u> . |

DETAILED ACTION

1. This office action is in response to applicant's amendment filed 7/7/04, wherein claims 16-20, 22-24, and 16-29 were canceled; claims 4, 10-12, 30, and 31 were amended. Claims 1-15, 21, 25-26, and 30-34 remain pending in the instant application. Applicant's comments regarding the withdrawn claims in the previous action are acknowledged. Those claims have been rejoined in this subsequent non-final office action. Any inconvenience is regretted.

SPECIAL CIRCUMSTANCES OF THIS APPLICATION

Even if a copending application is listed on this instant application or other copending applications or patents and the material information is technically of record in one or more parent or copending applications, the unusually large number of applicant's cases in varying stages of the examination process might result in one or more parent applications not being readily available for review, or material information of record not being readily apparent. Moreover, applications, which may not have any direct relationship, as continuing applications, to other copending applications by the same assignee may not be readily apparent due to the unusually large number of applicant's cases.

Applicant should point out such material information to the examiner of the instant application if the criterion for materiality applies, and if the examination record provides applicant reason to believe such information has not been considered by the examiner. This should include a listing of all related cases whether previously filed, recently filed, currently being filed, or patented.

If, to the best of applicant's knowledge, applicant has no previous patent or copending application, which would meet the definition of "material," applicant is requested to make a statement of that fact of record.

Any parent application labeled as a CIP or Divisional is assumed to claim a patentably distinct invention from the claims of this application and therefore the issue of double patenting has not been considered and the rights to priority are limited to the common disclosed subject matter unless it is brought to the examiners attention that some claims are not distinct.

37 CFR 1.56. Duty to disclose information material to patentability.

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(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4, 21, 25-26, and 34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-15 and 19-20 of copending Application No. 10/052,806. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject

matter, that, it claims 6-15 and 19-20 anticipate the claim language of claims 1-4, 21, 25-26, and 34 of the instant application. Claims 6-15, and 19-20 include a cutting blade, detection system for detecting a dangerous condition between the user and blade (contact is a dangerous condition), a reaction system (brake) and fusible member (e.g., claim 11).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-4, 21, 25-26, and 34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/643,296. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, that, it claims 1-10 anticipate the claim language of claims 1-4, 21, 25-26, and 34 of the instant application. Claims 1-10 include a cutting blade, detection system for detecting a dangerous condition between the user and blade (contact), a reaction system (brake) and fusible member (e.g., claim 11).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 8-12, 21, 25-26 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friemann et al., U.S. Patent 3,858,095, or Yoneda, U.S. Patent 4,117,752, in view of Baur, U.S. Patent 3,695,116.

Friemann et al. or Yoneda all discloses similar invention as claimed, including for example, support structures (see elements 15, 18, 21 in Yoneda; 11, 6-9, 10 in Friemann et al.), a cutting tool (14 in Yoneda, 5 in Friemann et al.), a detection system (see columns 1 and 3, lines 59-65 and 14-25, A in Yoneda; see column 1, lines 44-55, Cbm, bridge 3, 4 in Friemann et al.) capable of detecting a dangerous condition between the cutting tool and a person, a reaction system (see 20 in Yoneda; see columns 3 and 4, lines 34-68 and 1-20 in Friemann et al.) adapted to perform a specified action upon detection of the dangerous condition.

The braking systems of Friemann et al., and Yoneda are all electromechanical braking systems wherein a braking element is actuated by electromagnetic/solenoid such that the braking element engages the blade or drive of the blade to stop the blade; hence, Friemann et al., and Yoneda lack a fusible member and fuse firing subsystem for actuating the brake. However, Baur discloses that it is old and well known in the art to replace solenoids and electromagnetic switches with spring loaded actuators with firing subsystems that are electrically responsive by tensioned wires for the purpose of providing fast acting, less expensive, and smaller devices that provide large mechanical forces. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to replace the electromagnetic/solenoid actuators of

Friemann et al., and Yoneda with spring loaded actuators with firing subsystems, as taught by Baur, in order to create less expensive, smaller and fast acting braking systems.

As to claim 9, the modified devices of Friemann et al. and Yoneda all disclose at least two spaced-apart electrodes (26 or 36 or 34), where at least a portion of the fusible member is positioned to contact and extend between the electrodes (see Figures 1-3). It should be noted that there is no specific definition of "electrode", and is typically defined as solid electrical conductor through which current passes.

As to claim 10, the modified devices of Friemann et al. and Yoneda all disclose the spacing between the electrodes is less than 1.0 inches, see column 4, lines 20-30, wherein it is stated that the outside diameter of the housing 10 is 0.5 inches, wherein the distance between elements 34 or 26 as shown in Figures 1 and 3 must be less than 1.0 inch.

As to claims 11 and 12, the modified devices of Friemann et al. and Yoneda lack the specific spacing between the electrodes being either less than 0.1 inch or 0.05 inches. However, it would have been an obvious matter of design choice to make the modified devices of Lokey, Friemann et al., Yoneda with either electrode spacing of less than 0.1 inch or 0.05 inch for the purpose of making the modified devices of Friemann et al, Yoneda as small as possible and as desired, because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As to claim 25, the fused wire of the modified devices would require replacement if used again.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friemann et al. or Yoneda in view of Baur as applied to claim 1 above, and further in view of Gaiis et al., U.S. Patent 4,589,047.

The modified devices of Friemann et al. and Yoneda disclose the invention substantially as claimed except for the circuit board where the electrodes are traces on the circuit board. However, the examiner takes official notice of the use of electrode traces on circuit boards for the purpose of smaller and more compact device as taught e.g. by Gaiis et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a circuit board for mounting the actuation device of the modified devices of Friemann et al., Yoneda, and in order to reduce the overall size of the actuator.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friemann et al. or Yoneda in view of Baur as applied to claim 1 above, and further in view of Gaiis et al., U.S. Patent 4,589,047.

The modified devices of Friemann et al. and Yoneda disclose the invention substantially as claimed except for the at least one silicon controlled rectifier. However, Gaiis et al. discloses that it is old and well known in the art to use SCR with fusible member actuating devices for the purpose of controlling the flow of current such that triggering of the actuator is facilitated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a SCR with the

modified devices of Friemann et al. and Yoneda in order to facilitate the triggering of the actuator.

9. Claims 1-2, 4-5, 8-15, 21, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friemann et al., U.S. Patent 3,858,095, or Yoneda, U.S. Patent 4,117,752, in view of Gaiis et al., U.S. Patent 4,589,047.

Friemann et al. or Yoneda both disclose similar invention as claimed, including for example, support structures (see elements 15, 18, 21 in Yoneda; 11, 6-9, 10 in Friemann et al.), a cutting tool (14 in Yoneda, 5 in Friemann et al.), a detection system (see columns 1 and 3, lines 59-65 and 14-25, A in Yoneda; see column 1, lines 44-55, Cbm, bridge 3, 4 in Friemann et al.) capable of detecting a dangerous condition between the cutting tool and a person, a reaction system (see 20 in Yoneda; see columns 3 and 4, lines 34-68 and 1-20 in Friemann et al.) adapted to perform a specified action upon detection of the dangerous condition.

The braking systems of Friemann et al. and Yoneda both are electromechanical braking systems wherein a braking element is actuated by electromagnetic/solenoid such that the braking element engages the blade or drive of the blade to stop the blade; hence, Friemann et al., and Yoneda all lack a fusible member and fuse firing subsystem for actuating the brake. However, Gaiis et al. discloses that it is old and well known in the art to use switching devices comprised of spring biased actuators with firing subsystems that are electrically responsive by tensioned wires for the purpose of providing fast acting, less expensive, and smaller devices that provide large mechanical forces. Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention was made to replace the electromagnetic/solenoid actuators of Friemann et al., and Yoneda with spring loaded actuators with firing subsystems, as taught by Gaiis et al., in order to create less expensive, smaller and fast acting braking systems.

As to claim 9, the modified devices of Friemann et al. and Yoneda all disclose at least two spaced-apart electrodes (see the leads in Figure 6), where at least a portion of the fusible member is positioned to contact and extend between the electrodes. It should be noted that there is no specific definition of "electrode", and is typically defined as solid electrical conductor through which current passes.

As to claims 10-12, the modified devices of Friemann et al. and Yoneda lack the specific spacing between the electrodes being either less than 1.0 inches or rather 0.1 inch or 0.05 inches. However, it would have been an obvious matter of design choice to make the modified devices of Friemann et al., Yoneda with either electrode spacing of less than 1.0 inches or 0.1 inch or 0.05 inch for the purpose of making the modified devices of Friemann et al, Yoneda as small as possible and as desired, because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As to claim 13, the modified devices of Friemann et al. and Yoneda disclose the invention substantially as claimed including a circuit board (60) where the electrodes are traces on the circuit board.

As to claim 14, the modified devices of Friemann et al. and Yoneda disclose the use of a capacitor with the firing system. See element 18 of Gaiis et al.

As to claim 15, the modified devices of Friemann et al. and Yoneda disclose the invention substantially as claimed including at least one silicon-controlled rectifier (see column 4, lines 12-30).

As to claim 25, the fused wire of the modified devices would require replacement if used again.

10. Claims 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Julien et al., U.S. Patent 5,056,426.

Julien et al. discloses the same invention as claimed including, e.g., an electrode system including a first (30) and second (32) electrodes electrically connected to a current source; a fusible member (nitinol wires 18/46) electrically interconnecting the electrodes; an electrical gate (43 or 44 or 45, column 3, lines 30-50) interposed between at least one of the electrodes and the current source to selectively control the flow of current from the current source to the at least one electrode, wherein the fusible member carries a tensile load of at least 10,000 psi and/or 100,000 psi. Julien et al. discloses that typical load carrying capacity is in the range of 750 pounds. Julien et al. further discloses that the diameter of the wire controls the speed of actuation and gives examples of 0.010 inches to 0.080 inches. Therefore, Julien et al. inherently discloses a tensile load of at least 100,000 psi because a load of 750 lbs with a wire diameter of 0.07 inches gives tensile load of 194,883 psi.

Julien et al., does the need for the fusible member to fuse within milliseconds; however, lacks the specific teaching of the fusible member fusing in less than 10 milliseconds. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made for the fusible member of Julien et al. to fuse in less than 10 milliseconds for the purpose of providing a safe and efficient release mechanism with minimal interference with the overall goal device, because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 32, the modified device of Julien et al. discloses the invention substantially as claimed except that the wires are made of nitinol instead of stainless steel or nichrome. However, the examiner takes official notice that nichrome is old and well known in the art for its high tensile strength and temperature stability. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use nichrome instead of nitinol in order to provide increased with high tensile strength and temperature stability, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

11. Claim 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julien et al., U.S. Patent 5,046,426, as applied to claim 30 above and further in view of McCormick, U.S. Patent 5,471,888.

The modified device of Julien et al. discloses the invention substantially as claimed except that the fusible member is spring tempered. However, the examiner takes official notice that it is old and well known in the art to use spring tempered fusible wires because of there increase hardness, as taught for example by McCormick. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

invention was made to use spring tempered wires in order to provide increased hardness. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use spring tempered fusible members in order to provide increased hardness, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Response to Amendment

12. The Declaration under 37 CFR 1.132 filed 7/7/04 is insufficient to overcome the rejection of the above claims based upon Friemann et al., Yoneda, Baur, Gaiis et al. as set forth in the last Office action because: it fails to set forth any facts and there is no showing commensurate in scope with the claims.

The Declaration gives Gass's experience in field, which in essence amount to affirmation that the affiant has never seen, the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. Moreover, it refers only to the safety-cutting tool described in the instant application and not to the specific details of individual claims of the application. As such the declaration does not show that the objective evidence of nonobviousness is commensurate in scope with the claims. Furthermore, e.g., claim 30 is not even related to cutting tools.

The Declaration states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the

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art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references; they would still be unable to solve the problem. The number of accidents reported each year caused by cutting tools does not necessarily suggest a long felt need. On one hand, it is not clear that others in the art were working on the problem. On the other hand, the relied upon references were issued in the seventies and most cutting tools manufactures don't even supply even the most braking devices. If there was a long felt need wouldn't the public be demanding and wouldn't the manufactures be making at least some attempt to provide some form of braking system no matter how crudely or efficiently the braking system would be?

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Response to Arguments

13. Applicant's arguments with respect to claims 30-33 have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that there is no suggestion or motivation to use the fusible member as taught by Baur with the devices of Friemann or Yoneda and any such combination would significantly change the devices whereby the intended operation of the devices would be restricted. However, the examiner respectfully disagrees. For example, claims 1 and 2 are so broad in scope that the specified action need not even be remotely related to cutting tool. The specified action could encompass turning a light switch on.

Although, it is true that establishment of obviousness requires some suggestion or motivation, it should be noted that the references need not expressly articulate reasons for combining references. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. Therefore, Friemann, Yoneda, and Baur and/or Gaiis are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case, Friemann, Yoneda, and Baur suggest using fast action release mechanisms for releasing the brakes cutting tools in order to create less expensive, smaller and fast acting braking systems. Moreover, Baur suggests that spring loaded actuators with fusible members are known replacements for solenoids and electromagnetic switches because of their speed of actuation.

Furthermore, it should be noted that there is no requirement for the references to be bodily incorporated together; but, rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, as explained above, the combined teaches suggest a cutting tool with braking mechanisms with fusible members.

Applicant contends that the prior art references lack the spaced apart electrodes and/or electrodes on a circuit board. It should be noted that term "electrode" does not imply any specific structure, and is typically defined as:

1. A solid electric conductor through which an electric current enters or leaves an electrolytic cell or other medium; or

2. A collector or emitter of electric charge or of electric-charge carriers, as in a semiconducting device.¹

In this case, any connection between to parts can be considered an electrode and Gaiis et al. discloses the use of circuit board 60. Therefore, Gaiis et al. includes spaced apart electrodes in combination with a circuit board. Nothing in the claims suggests any specific use of the electrodes or type.

14. For the reasons above, the grounds of rejection are deemed proper.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art references cited but not relied upon were cited to shown similar devices in the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
February 28, 2005